

Remarks

In view of the following remarks, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections.

Claim Status

Upon entry of the foregoing amendments, claims 1-15, and 55-82 are currently pending with claims 1, 55, 76 and 81 being the independent claims. Claims 16, and 18-31 have been cancelled. Claims 72-82 are newly presented. Claims 1, 14, 15, 55, and 71 have been amended. Claim 14 was amended to correct a typographical error. Support for the new claims and other claim amendments can be found in the original claims and throughout the Specification, e.g., on pages 11-12, paragraph [0026]; page 13, paragraph [0031]; pages 21-22, paragraph [0055]; and Example 11, paragraph [0186]. Thus, no new matter is introduced by these new claims or claim amendments and their consideration is respectfully requested.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 1-16, 18-31, and 55-71 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kaser in view of Yaver and Brush. Claims 16 and 18-31 have been cancelled. Therefore, the rejection is moot with respect to these claims. Applicants respectfully traverse the rejection with respect to claims 1-15 and 55-71.

Establishing *prima facie* obviousness requires a showing that each claim element is taught or suggested by the prior art. See *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Absent a showing of such motivation and suggestion, *prima facie* obviousness is not established. See *In re Fine*, 5 USPQ2d at 1598.

The Office Action states that it would have been obvious to one of ordinary skill “to have combined the modified (Cy3- and Cy5-labeled) nucleotides of Kaser with the composition of Yaver” and “as such would have allowed for the simultaneous incorporation of multiple modified nucleotides in the resultant labeled nucleic acid and thereby eliminating a subsequent step needed to perform the labeling as disclosed by Yaver.” See Office Action at page 4.

The claimed compositions, reaction mixtures and kits include at least two “different, modified, monomeric deoxyribonucleoside triphosphates.” Yaver teaches a probe prepared by reverse transcription where a single modified nucleotide (*i.e.*, aminoallyl-dUTP) is incorporated into a synthesized nucleic acid molecule. The modified nucleotide products are subsequently labeled by “coupling to either Cy3 or Cy5.” See Yaver at paragraph [0243]. Kaser teaches a probe prepared by reverse transcription where a single labeled nucleotide (*i.e.*, “Cy3-dCTP or Cy5-dCTP”) is incorporated into a synthesized nucleic acid molecule. See Kaser at column 17, line 42. In contrast, the Applicants disclose nucleic acid molecules where two or more different modified nucleotides (such as aminoallyl-dUTP and aminohexyl-dATP) are incorporated into a synthesized nucleic acid molecule. None of the cited references, taken individually or together, disclose compositions, reaction mixtures or kits including two or more different, modified nucleotides having the ability to bind one or more detectable labels.

Applicants therefore respectfully request that the rejection of claims 1-15 and 55-71 under 35 U.S.C. §103(a), be withdrawn.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw

all presently outstanding rejections. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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